IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5547 OF 2003

Shri Vijaykumar Narayan Joshi : Petitioner

V/s.

The Sangli Bank Limited & Ors. : Respondents

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Mrs.Shubhada D. Khot for the petitioner.

Mr.J.P.Cama i/b. R.M.G.Law Associates for respondent no.1.

Mr.S.V.Bhathena for respondent no.5.

Mr.P.I.Khemani, Asstt. Govt. Pleader, for respondent no.6.

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CORAM : S.RADHAKRISHNAN &
S.A.BOBDE, JJ.

October 19, 2004.

P.C.:

1. Heard the learned counsel for the petitioner and the respondents.

2. Mr.Cama, learned counsel for respondent no.1, The Sangli Bank Ltd., without prejudice to the contention of respondent no.1 that the Writ Petition under Article 226 of the Constitution of India will not lie against respondent no.1 Bank, fairly states that respondent no.1

will deposit in this Court a sum of Rs.2,60,792.85 which, according to the learned counsel for respondent no.1, is only payable to the petitioner. However, the learned counsel for respondent no.1 states that respondent no.1 has a claim against the petitioner as mentioned in para 3 of the affidavit-in-reply dated 16.10.2004 filed by respondent no.1. In that behalf, the learned counsel for respondent no.1 states that respondent no.1 will be adopting appropriate proceedings against the petitioner.

3. The learned counsel for the petitioner states that the petitioner has also further claims against respondent no.1 over and above the aforesaid sum of Rs.2,60,792.85.

4. Perused the affidavit-in-rejoinder of the petitioner dated 19.10.2004 wherein in para 4, it is mentioned that the petitioner has already mortgaged his residential house situate at CTS no.1531, Sector no.8, Anjaneya Nagar, Belgaum, which is worth around Rs.15 lakhs to Rs.20 lakhs.

5. The petitioner is entitled to withdraw the aforesaid sum of Rs.2,60,792.85 which the learned counsel for respondent no.1 states will be deposited with the Registrar General of this Court within a period of two weeks from today. The petitioner will be entitled to

withdraw the amount of Rs.2,60,792.85 upon furnishing security to the satisfaction of the Registrar General so that the petitioner as well as respondent no.1 are at liberty to adopt appropriate proceedings against each other with regard to their security against each other. In the event, respondent no.1 is able to succeed to obtain a decree against any of the parties as mentioned in para 3 to the extent of the aforesaid sum of Rs.2,60,792.85, respondent no.1 will be able to enforce the security.

6. It is made clear that as the said residential house at Belgaum is offered as a security by the petitioner, if any decree is passed, for executing the same, respondent no.1 will be entitled to invoke the security.

7. The Writ Petition stands disposed of accordingly.

Sd/-

(S. RADHAKRISHNAN, J.)

Sd/-

(S.A. BOBDE, J.)